

SEP 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELISEO ROSAS CARRERA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-70641

Agency No. A076-270-110

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 14, 2009^{**}

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Eliseo Rosas Carrera, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider its order summarily affirming an immigration judge's ("IJ") decision

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying his cancellation of removal application. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider, *Oh v. Gonzales*, 406 F.3d 611, 612 (9th Cir. 2005), and review for substantial evidence the agency's factual findings, *Serrano Gutierrez v. Mukasey*, 521 F.3d 1114, 1116 (9th Cir. 2008). We deny the petition for review.

Substantial evidence supports the agency's determination that Rosas Carrera voluntarily departed in 1997 in lieu of proceedings before an IJ, thereby breaking his accrual of continuous physical presence. *See Serrano Gutierrez*, 521 F.3d at 1117-18. The BIA therefore did not abuse its discretion in denying Rosas Carrera's motion to reconsider because the motion failed to identify any error of fact or law in the BIA's October 12, 2004, order. *See* 8 C.F.R. § 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc).

PETITION FOR REVIEW DENIED.